Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Master Isidoro Rodriguez-Hazbun,

Petitioner,

v.

The National Center for Missing and Exploited Children, and
Ms. Amalin Hazbun Escaf,

Respondents.

Petition for a Writ of Certiorari To the Supreme Court of Virginia and The Virginia Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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Since June 18, 2003, the Courts of the Commonwealth of Virginia have issued twenty-three orders citing the Virginia Code to deny jurisdiction to disregard Petitioner's request for the expeditious securing of visitation rights under a valid Joint Custody Agreement in accordance with Article 2, Article 11 and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980 ("Treaty"), 42 U.S.C. § 11601(b)(4) and § 11603 of the International Child Abduction Remedies Act ("ICARA"), and House Concurrent Resolution 293.

QUESTION PRESENTED FOR REVIEW

1. WHETHER UNDER THE SUPREMACY CLAUSE ARTICLE VI, CLAUSE 2 OF THE UNITED STATES CONSTITUTION THE COURTS OF THE COMMONWEALTH OF VIRGINIA ARE COMPELLED TO COMPLY WITH ARTICLE 2, 11, AND CHAPTER IV OF THE TREATY SO TO SECURE PETITIONER'S RIGHTS OF INTERNATIONAL VISITATION WITH HIS FATHER ON AN EXPEDITED BASES IN ACCORDANCE WITH THE TERMS OF A VALID JOINT CUSTODY AGREEMENT?

2. WHETHER THE COURTS OF THE COMMONWEALTH OF VIRGINIA VIOLATED PETITIONER'S RIGHTS TO DUE PROCESS, AND EQUAL PROTECTION OF THE CONSTITUTION AND TREATY, AS WELL AS HIS RIGHT TO MEANINGFUL IMPARTIAL ACCESS TO THE COURTS?

LIST OF PARTIES

Petitioner Master Isidoro Rodriguez-Hazbun is a 15 and a half years-old citizen of the United States.

Respondent Ms. Amalin Hazbun Escaf, Citizen of the Republic of Colombia.

Respondent, The National Center for Missing and Exploited Children, Alexandria, Virginia, as contractor to the United States Department of State, The Office of Children Issues, Bureau of Consular Affairs, Washington, D.C..

Respondent, The Judges of the Supreme Court of Virginia, Richmond, Virginia.

Respondent, The Judges of the Court of Appeals of Virginia, Richmond, Virginia.

Respondent, The Judges of the Fairfax County Circuit Court, Fairfax, Virginia.

Respondent, The Judges of the Fairfax County Juvenile & Domestic Relations Court, Fairfax, Virginia.

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STATEMENT OF JURISDICTION

On October 1, 2004 the Supreme Court of Virginia denied Petitions for Rehearing (A-5, A-6, A-7, and A8). The panel of the Supreme Court of Virginia entered orders on August 18, 2004 (A-9, A-10, A-11, and A-12), denying appeal of orders of the Court of Appeals of Virginia (A-21, A-25, A-27, A-28, and A-30). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a), Article 2 and 11 of the Treaty; and 42 U.S.C. § 11601(b)(4) ICARA.

INTEREST OF THE UNITED STATES

This case concerns the enforcement of the Article 2, 11, and Chapter IV of the Treaty by the Courts of the Commonwealth of Virginia to expeditiously secure the rights of visitations under a valid

Joint Custody Agreement. The United States has an undisputed interest in the enforcement of the provisions of the Treaty by the Commonwealth of Virginia, the responsibilities of its various agencies, including the United States Department of State and the United States Department of Justice, and their contractor the National Center for Missing and Exploited Children ("NCMEC"), established in 1984 in Virginia to act under agreement as an "instrumentality of government" pursuant to congressional mandates (see 42 U.S.C. §§ 5771 et seq.; 42 U.S.C. § 11606; 22 C.F.R. § 94.6, and Congressional Joint Concurrent Resolution 293).[3]

STATEMENT REQUIRED BY RULE 29.4(b) and (c)

The Court is informed that 28 U.S.C. § 2403(a) and (b) may apply and this Petition has been served upon the Solicitor General of the United States and the Attorney General of the Commonwealth of Virginia. Neither the Supreme Court of Virginia nor the Court of Appeals of Virginia certified to the Attorney General that pursuant to Article of VI, clause 2 the constitutionality of the Treaty, Act of Congress, and/or VA Code § 16.1-296 and § 17.1-405 were called into question.

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[3]The NCMEC has received million of dollars in contrats, grants and awards since 1984, in part to provide the administrative process in the United States for any petition under the Treaty, including to secure international visitation rights under Chapter IV of the Treaty. *See* House Concurrent Joint Resolution 293, May 23, 2000 ("Resolution 293")(B-7).

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42 U.S.C. § 11603 . . . . . B–4

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Department of State, 51 Fed. Reg. 10,513 (1986), V. Access Rights-Article 21 . . . . . B–6

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STATEMENT OF THE CASE

Petitioner Master Isidoro Rodriguez-Hazbun ("Isidoro") is a citizen of the United States, who will be 16 year-old on March 10, 2005. (A-54). However, based on Chapter III of the Treaty a federal district court disregarded Isidoro's original action filed with the Fairfax Juvenile and Domestic Relations District Court ("Fairfax J&D Court"),[4] his preference, his "best interest," and his fundamental rights, to order Isidoro from the United States to the Republic of Colombian on June 11, 2002.[5] But this did not deter Isidoro's desire and right to be his father in the United State.

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[4]*Master Isidoro Rodriguez-Hazbun, Petitioner, v. Amalin Hazbun Escaf*, Case No. JJ-347-050-01-0, was filed by Isidoro on July 13, 2001 with the Fairfax J&D Court to seek the modification of the Joint Custody Settlement Agreement between his parents (A-49), to permit his remaining with his father in the United State given the changed conditions in the Republic of Colombia. However the State court stayed consideration of Chapter III of the Treaty and the trial scheduled for February 25, 2002, and deferred to the subsequently filed federal action with a trial date of April 25, 2002, *Escaf vs. Rodriguez*, 191 F. Supp.2d 685(E.D. Va. 2002, T.S. Ellis III, J.).

[5]*See Escaf v. Rodriguez*, 200 F.Supp. 2d 603 (E.D. Va. 2002, T.S. Ellis III, J.); affirmed in unpublished decision in *Hazbun v. Rodriguez*, 52 Fed. Appx. 204 (4th Cir. 2002), cert. denied, U.S. Supreme Court Docket No. 02-1268, March 3, 2003.

On January 27, 2003 Isidoro filed an action to exercise his visitation rights under Chapter IV of the Treaty. However he soon discovered the federal courts collusion with the Executive Branch to disregard his fundamental rights vis-a-vis unauthorized polices under Chapter III of the Treaty.[6]

Thus on June 11, 2003 Isidoro filed a petition with the Fairfax J&D Court (A-48) for the expedited securing of his visitation rights with his father under the Joint Custody Agreement(A-48),[7] based on their original and concurrent jurisdiction under 42 U.S.C. § 11603 to enforce Articles 2 and 11, and Article 21 of Chapter IV of the Treaty as well as VA Code § 20.124.3 Pursuant to Article 21 of the Treaty the respondent NCMEC was also given notice as the "instrumentality

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[6]*See, Isidoro Rodriguez Hazbun and his father Isidoro Rodriguez, Esq. vs. The National Center for Missing and Exploited Children et al.*, DC DC No. 03-CV-0102 (RWR), DCCA No. 03-5092; and *In re Master Isidoro Rodriguez-Hazbun*, S Ct No. 04-454.

[7]The agreement between Isidoro's parents was entered in 1997 under the Republic of Colombia Civil Code Title XII, Article 253 and Article 264, *Legis*, ed. 2002. It assures both parents right and responsibility for the care, control and authority to make decisions concerning Isidoro, as well as for visitation. No modification or amendment were ever made to these parental rights. (A-52) However, prior to and since Isidoro being shanghaied to Colombia under Chapter III of the Treaty, Respondent Ms. Amalin Hazbun Escaf ("Escaf") has cut off all communication with Isidoro's father, and has denied Isidoro's repeated request to return to the United States to visit with his father in violation of rights under the agreement (A-49).

of government" responsible for processing said petition for visitation in the United States.

In response to Isidoro's petition under the Treaty to secure his rights of visitation on an expedited bases, June 18, 2003 the Fairfax J&D Court on issued a summary order denying the petition and staying further proceeding "pending all proceedings U.S. District Court Action" (A-47).

Pursuant to his right under Article 2 of the Treaty and the Code of Virginia Isidoro filed notice of transfer to the Fairfax County Circuit Court ("Fairfax Circuit Court"), so to obtain *de novo* hearing on all issues, and filed a motion to compel expedited processing of his petition under Art. 2, 11, and Chapter IV of the Treaty by NCMEC, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children and Amalin Hazbun-Escaf*, Fairfax County Circuit Court No. C-185125.

On July 25, 2003 without hearing any argument the Hon. Judge Longhorn Keith issued a summary order dismissing the NCMEC and citing court procedures to deny the motion for expedited consideration of the petition for visitation under the Treaty.

Isidoro immediately filed a Notice of appeal of the July 25, 2004 order with the Court of Appeals of Virginia Docket No. 2004-03-4. However, upon confirming that no procedures were in place for the conducting of expedited consideration pursuant to Article 2 and 11of the Treaty, Isidoro also filed with the

Supreme Court of Virginia a VA Code Sec. 17.1-409 motion to transfer the appeal because of the importance of this first impression case under the Treaty, and the ongoing harm being done to Isidoro by the delay and disregard of his rights, Transfer, Docket No._____. Significantly, Respondent Escaf never responded, but Respondent NCMEC filed a response in opposition to the motion to transfer containing misstatement of facts and law. On September 9, 2004 based on the filing of the NCMEC the Supreme Court of Virginia issued an unpublished summary order denying Isidoro's motion to transfer (A-19).

Thus in September 2003 due to the delay in preparing the record of the appeal of the order of July 25, 2003 Isidoro filed a Petition for Writ of Mandamus with the Court of Appeals of Virginia (Record No. 2758-03-4), to order the Hon. Judge Lonhorn Keith to sign the undisputed Statement of Facts. Despite filing a motion for expedited consideration pursuant to the Treaty, it was not until three months later on December 3, 2003, that the Court of Appeals of Virginia remanded the Statement of Facts for Judge Keith to conduct a hearing to consider Isidoro's undisputed submission. Judge Keith set the hearing for January 9, 2004. Isidoro issued Witness Subpoenas to the NCMEC to testify at the hearing scheduled for January 9, 2004.

On December 4, 2003, six months after the filing of the petition for the expedited securing of his visitation rights under Articles 2, 11, and Chapter IV of the Treaty, the Hon. Judge Stanley P. Klein of the Fairfax County Court dismissed the appeal without

prejudice (A-42), stating that he lacked jurisdiction pursuant to VA Code 16.1-296 (A-45), and refused to either conduct an expedited *de novo* proceeding on Isidoro's petition for visitation under the Treaty(A-45), and refused a motion to remand the issues under the Treaty and ICARA back to the Fairfax J&D Court for expedited consideration (A-46). But the Court denied the NCMEC motion to quash Witness Subpoenas since Isidoro had a right to them.

On January 5, 2004, Judge Keith conducted an *ex parte* hearing and granted the motion filed without notice by the NCMEC to quashed the Witness Subpoenas (A-40 and A-41). Subsequently, on January 9, 2004 Judge Keith confirmed his disregarding Isidoro's rights under the Treaty (A-39), issued his "corrected" Statement of Facts of the July 25, 2003 audience without conducting any hearing, and disregarding the "law of the case" based on the ruling of December 5, 2003, to sanction Isidoro $1,000.00 to be paid to the NCMEC for the issuance of the Witness Subpoenas (A-30, A-33, A-35, A-37, A-40, and A-41).

Notice of Appeals of December 4, 2003, as well as of January 5 and 9, 2004 orders were filed with the Court of Appeals of Virginia Record No. 0293-04-4; and Record No. 3247-03-4, based on violation of Isidoro's fundamental rights to due process and equal protection of the laws due to the lack of impartiality of the lower courts, and the repeated violation of Isidoro's rights under Articles 2 and 11, and Chapter IV of the Treaty and ICARA.

On April 28, 2004 in *Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al.* No 2758-03-4 the Court of Appeals of Virginia in unpublished order dening without any explanation, the motion filed in September 2003 for expedited consideration of visitation rights under the Treaty and a motion for judicial notice of dangers of in the Republic of Colombia (A-27); and, an order denying the Petition for Writ of Mandamus as to the signing Isidoro's undisputed Statement of Facts of August 5, 2003, despite the fact no hearing was held (A-28).

Also on April 28, 2004, in *Isidoro Rodriguez-Hazbun v. Amalin Hazbun Escaf,* Record No 2004-03-4, in an unpublished order the Court of Appeals of Virginia denied jurisdiction based on VA Code § 17-1.405, to dismiss the appeal of the order of July 25, 2003 denying expedited considerations of visitation rights pursuant to the Treaty and the *ex parte* order dismissing the NCMEC from proceedings (A-30).

On June 8, 2004 in *Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al.* No 0293-04-4, in an unpublished order the Court of Appeals of Virginia again denied jurisdiction based on VA Code § 17.1-405, to dismiss the appeal of the *ex parte* January 5, 2004 orders quashing Witness Subpoenas, and the January 9, 2004 order imposing $1,000.00 sanctions, which was paid on January 23, 2004, for issuance of Witness Subpoenas to NCMEC (A-25).

On July 6, 2004 an unpublished order of the Court of Appeals of Virginia affirmed the December 4, 2003 order denying jurisdictions pursuant to VA Code § 16-1-296, and denied expedited consideration of visitation rights under the Treaty by obfuscating the previous proceeding in March through June 2002 in federal court under Chapter III with these current proceedings under Chapter IV of the Treaty, *Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al.* Record No 3247-03-4 (A-21).

Four timely Petitions for Appeal were filed with the Supreme Court of Virginia challenging all of these unpublished orders based on violation of Isidoro's rights under the Treaty and the denial of due process and equal protection of the laws due to lack of impartiality of the lower courts, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children and Amalin Hazbun-Escaf,* Supreme Court of Virginia Record No. 041217; Record No. 041283; Record No. 041481; and, Record No. 041702.

On August 6, 2004 Isidoro filed a motion in accordance with Article 2 and 11 of the Treaty requesting that the Supreme Court of Virginia issue a statement for its delay in conducting expedited proceeding to secure Isidoro's visitation rights under the Joint Custody Settlement Agreement, the Treaty, the provisions of ICARA, and Resolution 293 (B-7).

On August 18, 2004, without providing an opportunity for oral argument as required by VSC Rule 5:17 and 5:19, the panel of the Supreme Court of

Virginia issued four orders dismissing Isidoro's appeals under the Treaty, his right to access to the courts, and his right to due process and equal protection of the Virginia Code by stating that father's lacked standing in Record No. 041481 (A-9); Record No. 041702 (A-10); Record No. 041217 (A-11); and, Record No. 041283 (A-12).

On October 1, 2004 the Supreme Court of Virginia denied four Petitions for Rehearing in Record No. 041481 (A-5); Record No. 041702 (A-6); Record No. 041217 (A-7); and, Record No. 041283 (A-8).

On November 4, 2004 a post marked unpublished order of the Court of Appeals of Virginia was received, but dated July 6, 2004, which assess damages of $30 against Isidoro to Respondent Escaf, although filing no brief or other pleading below (A-20).

On November 5, 2004 the Supreme Court of Virginia denied the motion to stay issuance of the mandate pending resolution of the issues by this Court, Record No. 041481 (A-1); Record No. 041702 (A-2); Record No. 041217 (A-3); and, Record No. 041283 (A-4).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE WRIT SHOULD BE GRANTED BECAUSE PURSUANT TO THE SUPREMACY CLAUSE THE TREATY TAKES PRECEDENCE OVER THE PROCEDURES UNDER THE CODE.

Under settled principles interpreting the Supremacy Clause, Article VI Clause 2 of the Constitution (B-1), the judiciary of the Commonwealth of Virginia must follow the will of the United States Congress, the political branched of the federal government, that clearly is expressed in this Treaty of the United States and confirmed by Senate and House Joint Concurrent Resolution 293. See, e.g., *Hartford Fire Ins. Co. v. Merrett Underwriting Agency Management Ltd.*, 509 U.S. 764, 814-15 (1993) (domestic law must be construed so as to be consistent with the United States' international law obligations unless no other construction is possible).

Article 1 of the Treaty clearly states that its object is "to ensure that rights of visitations is effectively respected," (B-2). Article 2 of the Treaty mandates expedited proceedings. Article 21 spells out the general procedure to be followed when Isidoro filed his petitions to secure visitation rights under the Treaty is filed (B-2). See also, 42 U.S.C. § 11601(4), 51 Fed. Reg. 10,513 (1986), Joint Custody Settlement Agreement and Colombian Civil and Legislative Code, *Legis*, ed. 2002, Title XII, Article 253.

Under the provisions of 42 U.S.C. § 11603 (B-5), the Courts of Virginia are given concurrent jurisdiction to consider Isidoro's petition, and "shall" decide it in accordance with the expeditious procedures for consideration of petitions to secure visitation rights under Article 2 and Article 11 of the Treaty (B-2). Thus the Courts of the Commonwealth of Virginia have clear indisputable legal duty to be performed, and

these judicial duties are "so plainly prescribed as to be free from doubt." *Naporoano Metal & Iron Co. v. Secy of Labor of the United States*, 529 F.3rd 537 (3rd Cir 1976).

However since June 11, 2003 when Isidoro's filed a petition (A-48) with the Fairfax J&D Court for the expedited securing of visitation rights with his father during his 2003 Summer Vacation in accordance with the valid Joint Custody Agreement (A-49), and confirming order by the Family Court in the Republic of Colombia (A-52), the Courts of the Commonwealth of Virginia have used the Virginia Code,[8] to disregard 42 U.S.C. § 11603 (B-5) and the mandate under the Supremacy Clause for their expedited meaningful consideration of Isidoro's visitation rights in accordance Articles 2, 11 and Chapter IV of the Treaty (B-2), the relevant provisions of ICARA (B-3 to B-6), 51 Fed. Reg. 10,513 (1986) (B-6), and House Concurrent Resolution 293 (B-7).

Thus based on legal sophistry the Courts of Virginia have held that they lack jurisdiction under VA Code § 16.1-296 and § 17.1-405(3) and (4) because there was no final order, or an appealable interlocutory "adjudicating" the merits. This despite Isidoro being-denied visitations with his father for over 541 days,

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[8]"The jurisdiction, practice, and procedure of the juvenile and domestic relations district courts are entirely statutory, and are set forth in Chapter 11 of Title 16.1 of the Code." *Walker v. Department of Pub. Welfare,* 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982).

and despite Isidoro has been denied due process and equal protection of the laws to impartial access to the courts, as demonstrated by Isidoro having to pay $1,000.00 as sanction for the issuance of Witness Subpoenas to the NCMEC, and $30 in damages to Respondent Escaf, although filing no pleading in any of the proceeding below (A-33 to A-20). Furthermore since September 9, 2003 the Supreme Court of Virginia has refused to consider this important first impression case to secure visitation rights under the Treaty (A-19).

Therefor the Courts of the Commonwealth of Virginia have violated the Supremacy Clause by depriving Isidoro of his rights under the Treaty.

II. THE WRIT SHOULD BE GRANTED BECAUSE COURTS OF THE COMMONWEALTH OF VIRGINIA HAVE DEPRIVED ISIDORO OF DUE PROCESS, AND EQUAL PROTECTION OF THE LAWS, AS WELL AS THE RIGHT OF ACCESS TO THE COURTS FOR AN IMPARTIAL MEANINGFUL HEARING ON HIS RIGHTS UNDER THE JOINT CUSTODY SETTLEMENT AGREEMENT AND TREATY.

On January 5 and 9, 2004 the Fairfax Circuit Court issued *ex parte* orders to quash Witness Subpoenas, and disregarded the law of the case to impose $1,000.00 sanctions in seeking the testimony of the NCMEC (A-33). On July 6, 2004, the Court of Appeals of Virginia intentionally obfuscated and confused these proceeding under Chapter IV of the Treaty, to dismiss Isidoro's appeal as without merit (A-

21). On August 18, 2004, the panel of the Supreme Court of Virginia issued orders disregarding the record below, the rights under the valid Joint Custody Agreement (A-49 and A-52), Art. I of the Treaty, and 18 U.S.C. § 1204(a), as well as VA Code § 20-124.1, to dismiss Isidoro's appeal based on its summary order that Isidoro's Undersign Counsel/father "lacks standing in this matter because he has no authority to sue in his son's name." (A-9, A-10, A-11, and A-12).

A. Denial of Due Process

DUE PROCESS - is best defined in one word--fairness. The 5th Amendment to the Constitution guarantees that the government cannot take away a person's basic rights to "life, liberty or property, without due process of law." The 14th Amendment to the Constitution prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable when there is a recognized liberty or property interest at stake. *Board of Regents v. Roth*, 408 U.S. 564, 69 (1972). When a person is treated unfairly by the government, including the courts, he is said to have been deprived of or denied due process. *See. New York. Kulko v. Superior Court*, 436 U.S. 84 (1978).

Regarding Isidoro's right to due process and equal protection of the laws, as a 15 –year old boy this Court has declared that,

> There are rights granted to adults, which are withheld, from juveniles. But, under our Constitution, the condition of being a boy does not justify a kangaroo court . . . Due process of law is the primary and indispensable foundation of individual freedom. It is the basic essential term in the social compact, which defines the rights of the individual and delimits the power, which the state may exercise. *In re Gault*, 387 U.S. 1, 12, 87 S.Ct. 1428 (1967) (Emphasis added).

Thus from that point forward due process rights and privileges afforded to adults must be extended to Isidoro who is under 18, since this Court has stated that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Gault, supra.*

Because due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (citations omitted).

As detailed above, in the instant action the record is clear that Isidoro was treated unfairly by the Courts of the Commonwealth of Virginia and denied due processes.

Not only have the Courts of the Commonwealth of Virginia repeated disregarded Isidoro rights under the Joint Custody Agreement (A-49) and Treaty, but

too, they have imposed sanctions and damages for his seeking to exercise his rights under Article 2, 11, and Chapter IV of the Treaty (A-20 and A-33). Also they have failed to follow even will of the Legislature of Virginia on the issue of visitation,[9] and their own procedure to assure full argument of the issues.[10]

In summary the hearing before the Fairfax J&D Court on June 18, 2003, the hearings before the Fairfax Circuit Court on July 25, November 16, December 4, 2003, and January 9, 2004, and orders issued by the Court of Appeals of Virginia between April 28, 2004 and July 6, 2204, and the orders issued by the Supreme Court of Virginia have deprived Isidoro of due process by denying him of his visitation right with his father in violation of his rights under the Joint Custody Agreement and Treaty, as well as VA Code § 20-146.25, § 20-146.29, and § 20-146.35. More troubling was that the Supreme Court of Virginia denied Isidoro due process by dismissing Isidoro's appeal by holding that Undersign Counsel did not have standing (A-9, A-10, A-11, and A-12), by disregarding their own precedent and VA Code § 20-124.1 and § 16.1-82(B) regard

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[9]VA Code Ann. § 20-124.2(B) mandates that the courts to assure minor children of frequent and continuing contact with both parents, and encourage the parents to share in the responsibility of rearing of their children.

[10]VSCR § 5-17(g), which reads in part that "[t]he appellant shall be entitled to state orally, in person . . . , to a panel of this Court the reasons why his petition for appeal shall be granted."[Emphasis added].

ing what is required before parental rights are taken away.[11]

Thus the right of Isidoro to enjoy the mutual care, company, love and affection of his father, has taken away from him without due process of law since his being shanghaied on June 11, 2002. Isidoro has been irreparable harmed by the lost his fundamental to due process as a citizen of the United States to the meaningful consideration of his petition to secure his visitation rights in the United States with his father, *See Griswold v. Connecticut*, 381 US 479, (1965).

B. Denial of Equal Protection of the Laws

Isidoro has a fundamental right in his relationship with his father, including the right of visitation confirmed in the Joint Custody Agreement (A-49) and Art. 1 of the Treaty, that are to be afforded equal protection of the laws, *see Stanley v. Illinois*, 405 U.S. 645 at 658 (1972).

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[11]In defining the effect of termination of parental rights upon the legal relationship between parent and child, the Virginia Supreme Court has held that, "[t]he termination of parental rights is a grave, drastic, and irreversible action. When a court order termination or parental rights, the ties between the parent and child are severed forever, and the parent becomes a `legal stranger to the child'" *Lowe v. Department of Pub. Welfare*, 231 Va. 277, 280, 343 S.E. 2d 70, 72 (1986)(quoting *Shank v. Department of Soc. Servs.*, 217 Va. 506, 509, 230 S.E.2d 454, 457 (1976)); *see also Cage v. Harrisonburg Dept't of Soc. Servs.*, 13 Va. App. 246, 249, 410 S.E.2d 405, 406 (1991).

However, the above record of acts by the Courts of the Commonwealth of Virginia shows that Isidoro was deprived of equal protection of the Treaty, i.e., the refusing to hold expedited *de novo* hearing on the Fairfax J&D Court's June 18, 2003 summary orders denying visitations, the quashing and sanctioned Isidoro for issuing Witness Subpoenas for the hearing ordered on January 9, 2004(A-33 and A-35), the refusal to implement the Treaty, and the Supreme Court of Virginia dismissing Isidoro's appeal by holding that his father lacked standing-thereby in violation of the Treaty declaring rights different form the Joint Custody Agreement and depriving Isidoro of his father's protection and rights in violation of the Virginia Code.

C. Denial of Impartial Meaningful Access to the Courts

In *Warren Christopher, Former Secretary of State, et Al., Petitioners V. Jennifer K. Harbury*, 2002 U.S. LEXIS 4647, 536 U.S. 403; 122 S. Ct. 2179, 2198; 153 L. Ed. 2d 413 (2002), this court held that decisions of this Court have grounded the right of access to courts in Article IV Privileges and Immunities Clause, *Chambers* v. *Baltimore & Ohio R. Co.,* 207 U.S. 142, 148, 52 L. Ed. 143, 28 S. Ct. 34, 6 Ohio L. Rep. 498 (1907), the Fifth Amendment Due Process Clause, *Murray* v. *Giarratano,* 492 U.S. 1, 11, 106 L. Ed. 2d 1, 109 S. Ct. 2765, n. 6 (1989) (plurality opinion), and the Fourteenth Amendment Equal Protection, *Pennsylvania* v. *Finley,* 481 U.S. 551, 557, 95 L. Ed. 2d 539, 107 S. Ct. 1990 (1987), and Due Process Clauses, *Wolff* v. *McDonnell,* 418 U.S. 539, 576, 41 L. Ed. 2d 935, 94 S.

Ct. 2963, 71 Ohio Op. 2d 336 (1974); *Boddie* v. *Connecticut,* 401 U.S. 371, 380-381 (1971).

In *Christopher supra,* the Court discussed two types of denial of access to the Court, the first based on claims that systemic official action to frustrate a plaintiff in preparing and filing suits. Thus, denial of access to the court was found in *M. L. B.* v. *S. L. J.*, 519 U.S. 102, 106, 136 L. Ed. 2d 473, 117 S. Ct. 555-107 (1996) (record fee in parental-rights termination action); the second, category covers a specific case that cannot now be tried (or tried with all material evidence), no matter what official action may be in the future, *e.g., Bell* v. *Milwaukee,* 746 F.2d 1205, 1261 (CA7 1984) ("The cover-up and resistance of the investigating police officers rendered hollow [the plaintiff's] right to seek redress"), the loss of an opportunity to sue, *e.g., Swekel* v. *River Rouge,* 119 F.3d 1259, 1261 (CA6 1997) (police cover-up extended throughout "time to file suit . . . under . . . statute of limitations"), or the loss of an opportunity to seek some particular order of relief.

In the instant action based on the record wherein for 541 days Isidoro has been denied his right of visitation under the Treaty, Isidoro raised both categories in his claim of denial of access to access to an impartial court based on the U.S. Central Authority and NCMEC teaching of unauthorized policies and practices to the judges of the Commonwealth of Virginia through publications, training, briefings, and judicial conferences on the interpretation under the

Treaty (A-22).[12] *See* U.S. Central Authority Website; *see also* Section 4.3, Judicial Training, page 26 Good Practice in Handling Hague Abduction Convention Return Applications (2002), by Prof. Nigel Lowe and Sarah Armstrong; *International Child Abduction Database (INCADAT)*, at http: www.incadat.com; *and "The Judges' Newsletter,"* Volume III Autumn 2001, published by Butterworths LexisNexis.[13]

The record is clear that from the outset the NCMEC, as an "instrumentality of government" has frustrated Isidoro right to access to the courts to obtain visitation. The NCMEC's employees, and attorneys

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[12]The unauthorized policies and practices of the U.S. Central Authority and NCMEC taught to the State judiciary include: (i) disregarding 42 U.S.C. § 11603 grant of concurrent jurisdiction to State courts so to limit Treaty litigation to federal courts; (ii) disregarding the exception under the Treaty including fundamental rights of citizens of the United States exception, disregarding the "best interest" and preference of the child exception, and disregarding the "zone of war"; and, (iii) disregarding 42 U.S.C. § 11606(c) so to not promulgate regulations in the Code of Federal Regulations implementing Articles 2, 11, and Chapter IV of the Treaty, and 51 Fed. Reg. 10,513 (1986) (B–5), and so to thereby assume away the mandated judicial and ministerial duties to secure international visitation rights.

[13]The Courts of Virginia violation of the Treaty, what ever the motivation to assist the NCMEC, are entitled to no deference. See, e.g., *United States v. Pink*, 315 U.S. 203, 231 (1942) ("the power of a State to refuse enforcement of rights [based on State policy considerations] . . . must give way before the superior Federal policy evidenced by a treaty or International compact or agreement").

knowingly and with malicious intentionally failed to be scrupulous and have acted outside of purview of legitimate advocacy by filing pleading with intentional misstatements of law regarding their ministerial duty to secure visitation pursuant to Articles 2 and 21, 29, and 30 of the Treaty, and statutory rights under ICARA, and obfuscating the fact and rights under the Joint Custody Agreement (A-49), to deprive Isidoro of right to visitation with his father.[14] Thus because the response of the Courts of Virginia was to ignore these violations by the NCMEC, they have refused to act impartially, and denied Isidoro access to the courts.

Not only did the Courts of Virginia deny Isidoro his rights to due process and equal protection of the laws by disregarding his rights to visitations under the Treaty, but too, they denied him of legal rights mandated by the Virginia Legislature under VA Code § 20-146.25,[15] and § 20-146.29; as well as for the Fairfax

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[14]Repeatedly in response to Isidoro's petition for visitation the NCMEC have pushed their policy to not implement said rights under the Treaty and ICARA, and have abused their political status by misstatements of fact and law to obstruct the lawful exercise of visitation right by asserting that Rodriguez has "lost custody." Thus frustrating the lawful exercise of parental rights in violation of 18 U.S.C. § 1204, and the strict criteria of Va Code § 16.1-82(B), before a parents rights are taken away, *Logan v. Fairfax County Dep't of Huamn Sers.*, 13 Va. 13, 18, 409 S.E.2d 460, 463 (1991).

[15]VA Code Ann. § 20-124.2(B) mandates that the courts assure minor children of frequent and continuing contact with both parents, and encourage the parents to share in the responsibility of rearing of their children.

Circuit Court to conduct *de* novo review under Virginia Code § 20-146.35.[16]

CONCLUSION AND RELIEF SOUGHT

The injustice to Isidoro's rights by the federal court ordering his being taken from the United States on June 11, 2002 to Colombia have been augmented by the Courts of the Commonwealth of Virginia. The Virginia Code has been used to disregard the mandate of the Supremacy Clause to not comply with the Joint Custody Agreement, (A-49), the Treaty (B-1 to B-2), ICARA (B3 to B-6), the Federal Register (B-6), and the Joint House Concurrent Resolution 293 (B-7). The Courts of Virginia have deprived Isidoro of his right to an expedited proceeding to secure his right of visitations with his father in the United States. Furthermore, in violation of Isidoro's right to due process and equal protection of the laws, impartial access to the court under the Treaty and the Virginia Code, the Supreme Court of Virginia disregarded their own precedent to deprived Isidoro the benefits, opportunities, and his fundamental rights in the Father/Sons' relationship as a citizen of the United States under the Constitution,

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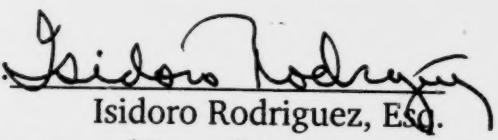
[16]On the issue of securing due process and equal protection of the law, and access to impartial courts, which is role of the judiciary, more than 200 years ago another Virginian wrote, "[j]ustice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit." James Madison, The Federalist, No. 51 at 241 (Masters, Smith & Co. ed. 1852).

by issuing a surreal order redefining his father's rights under the Joint Custody Agreement (A-49).

Thus in the interest of justice, this Court must grant certiorari in this case and determine whether the Courts of the Commonwealth of Virginia will continue to be permitted to engage in the wholesale disregard of their duty to secure international visitation rights in accordance with the Treaty entered into by the United States, the provisions of ICARA, and the will of Congressional as expressed in Joint Concurrent Resolution 293, and, if not, how such violations of the Courts of the Commonwealth of Virginia are to be remedied expeditiously so to secure Isidoro's rights of visitations to the United States for his Christmas Vacation 2004 beginning December 17, 2004, and to assure his returns for his other Vacations in 2005, and 2006.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Attorney of Record for Petitioner
Admission to the Bar of
The United States Supreme Court 1992

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APPENDIX

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041481
Court of Appeals No. 0293-04-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN, et al.,

Appellees.

From the Court of Appeals of Virginia

On October 5, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case.

Upon consideration whereof, the Court Denies the motion.

A copy,

Teste:
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Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041702
Court of Appeals No. 3247-03-4

AMALIN HAZBUN ESCAF,

Appellee.

From the Court of Appeals of Virginia

On October 5, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case.

Upon consideration whereof, the Court Denies the motion.

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Teste:

_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041217
Court of Appeals No. 2004-03-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN,

Appellee.

From the Court of Appeals of Virginia

On October 5, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case.

Upon consideration whereof, the Court Denies the motion.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041283
Court of Appeals No. 2758-03-4

HON. LANGHORNE KEITH, JUDGE OF
THE CIRCUIT COURT OF THE CITY OF FAIRFAX,

Appellee.

From the Court of Appeals of Virginia

On October 5, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case.

Upon consideration whereof, the Court denies the motion.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day* of October 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041481
Court of Appeals No. 0293-04-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN, et al.,

Appellees.

Upon a Petition for Rehearing

On consideration of the petition of Isidoro Rodriguez, Esq. to set aside the judgment rendered herein on the 18th of August, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:
_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day* of October 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041702
Court of Appeals No. 3247-03-4

AMALIN HAZBUN ESCAF,

Appellee.

Upon a Petition for Rehearing

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A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day* of October 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041217
Court of Appeals No. 2004-03-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of Isidoro Rodriguez, Esq. to set aside the judgment rendered herein on the 18th of August, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day* of October 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041283
Court of Appeals No. 2758-03-4

HON. LANGHORNE KEITH, JUDGE OF
THE CIRCUIT COURT OF THE CITY OF FAIRFAX,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of Isidoro Rodriguez, Esq. to set aside the judgment rendered herein on the 18th of August, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 18th *day of* August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041481
Court of Appeals No. 0293-04-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN, et al.,

Appellees.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 18th *day of* August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041702
Court of Appeals No. 3247-03-4

AMALIN HAZBUN ESCAF,

Appellees.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A copy,

Teste:

_____S_____

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 18th *day of* August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041217
Court of Appeals No. 2004-03-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN,

Appellees.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A copy,

Teste:
_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 18th *day of* August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041283
Court of Appeals No. 2758-03-4

HON. M. LANGHORNE KEITH, JUDGE
THE CIRCUIT COURT OF THE CITY OF FAIRFAX,

Appellees.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A copy,

Teste:

_____S_____

Clerk

COMMONWEALTH OF VIRGINIA
IN THE SUPREME COURT OF VIRGINIA

Master Isidoro Rodriguez-Hazbun
Petitioner-Appellant,
v. Sup. Ct. No. 041217
National Center for Missing and
Exploited Children, and Amalin Hazbun,
Respondents-Appellees.

_____ and _____

In re Master Isidoro Rodriguez-Hazbun,
Petitioner-Appellant,
Sup. Ct. No. 041283

_____ and _____

Master Isidoro Rodriguez-Hazbun
Petitioner-Appellant,
v. Sup. Ct. No. 041481
National Center for Missing and
Exploited Children, and
Amalin Hazbun Escaf,
Respondents-Appellees.

_____ and _____

Master Isidoro Rodriguez-Hazbun
Petitioner-Appellant,
v. Sup. Ct. No. 041702
Amalin Hazbun Escaf,
Respondent-Appellee.

On appeal from the Court of Appeal of Virginia Record Nos. 2004-03-4; 2758-03-4; 029304-4; and, 3247-03-4

Fairfax County Circuit Court No. C-185125

PETITIONER'S REQUEST UNDER ARTICLES TWO (2) AND ELEVEN (11) FOR STATEMENT OF REASONS FOR THE DELAY
The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 ("Treaty")
International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. 11601 *et seq*.

Petitioner-Appellant, Isidoro Rodriguez-Hazbun ("Isidoro") in accordance with Articles Two (2) and Eleven (11) of The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 ("Treaty") International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. 11601 *et seq*., hereby respectfully files this Request for a Statement of Reasons for Delay and failure of the Courts' of Virginia for over 14 months to process on an expedite basis Isidoro's application to secure his visitation rights to the United States to spend his vacations with his father in accordance with the Joint custody Agreement and his fundamental rights as a citizen of the United States–and which are now pending before the Supreme Court of Virginia in the above four (4) captioned Petitions for Appeal.

TREATY INVOLVED

Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No 11,670, 19

I.L.M. 1501, Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementing of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 11

The Judicial or administrative authorities of Contracting States shall expeditiously in proceeding for the return of children.

If the judicial . . . concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant . . ., shall have the right to request a statement of the reasons for the delay. . . .

FACTS

On June 11, 2002, against his wishes and fundamental rights as a citizen of the Untied States Isidoro was shanghaied from the United States on June 11, 2002, to the Republic of Colombia pursuant to an order of U.S. District Court of the Eastern District of Virginia, Judge T.S. Ellis III, *see Escaf vs. Rodriguez*, 191 F.Supp.2d 685 (E.D. Va. 2002), and *Escaf v. Rodriguez*, 200 F.Supp 2d 603 (E.D. Va. 2002).

Subsequently, the Hon. Judge Richard Roberts of the U.S. District Court of the District of Colombia has refused to act in any meaningful manner on Isidoro and his father's Complaint filed on January 27, 2003 to secure pursuant to Chapter IV of the Treaty on an expedited bases visitation rights, in an obvious attempt to deny access to the courts by avoiding the reaching of

the merits of the case by the tolling of the Treaty when Isidoro becomes 16 years of age on March 10, 2005, *see Isidoro Rodriguez-Hazbun and Isidoro Rodriguez v. National Center for Missing and Exploited Children et al.*, DC DC 03-0120 (Roberts, J).

Based on the alleged above unlawful acts of the federal judiciary by acting outside of their jurisdiction Isidoro filed on June 11, 2003 a petition with the Commonwealth of Virginia Courts pursuant to their original concurrent jurisdiction seeking the expedited securing of Isidoro's right of access and visitation with his father in accordance with Virginia Code Ann. § 20.146.25 and § 146.35, Isidoro's rights under the Joint Custody Agreement dated August 1, 1997, Isidoro's rights under Article 2 and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction Dated October 25, 1980, T.I.A.A. No 11,670, 19 I.L.M. 1501, 42 U.S.C. § 11601 at ¶ (4), 51 Fed. Reg. 10,513 (1986), Isidoro's rights under the laws of the Republic of Colombia.

As a result of the lower courts of Virginia refusal to comply with the Treaty to secure on an expedited bases Isidoro's right of visitation, Petition for Appeal Case No. 041217 was filed on May 27, 2004; Petition for Appeal Case No. 041283 was filed on June 1, 2004; Petition for Appeal Case No. 04481 was filed on June 21, 2004; and, Petition for Appeal Case No. 041702 was filed on July 21, 2004;

DISCUSSION

Now as of this date more then fourteen (14) months have elapsed since the commencement of this

action to secure on an expedited bases visitation rights in accordance with chapter IV of the Treaty. However, as of this date despite four (4) Petitions for Appeal filed based on rights under the Treaty the Honorable Supreme Court of Virginia has not reached any meaningful decision in these appeals irrespective of the evidence of the continuous malicious and negligent misstatement of fact and law by the U.S. Central Authority and NCMEC, regarding their ministerial duties under Chapter IV of the above cited Convention.

Thus pursuant to Articles 2 and 11 of the Treaty Isidoro request the Honorable Supreme Court of Virginia issue in accordance with Congressionally mandate a Statement of Reasons for the delay has deprived Isidoro of his fundamental rights to visitation and in his father/son relationship, rights under the U.S. Constitution, Constitution of Virginia, as well as under the Treaty.

CONCLUSION

In light of the interest of the Commonwealth of Virginia in the securing of the right of visitation as expressed by the legislature in Virginia Code § 20-146.25 and Virginia Code § 20-146.35, the rights under the Final Joint Custody Agreement, and the national and international importance of this matter based on the Treaty, and the best interest of Isidoro to have access and visitation with his father in the United States, it is respectfully requested that the Supreme Court explain the delay in consideration of the above appeals. Isidoro again respectfully requests that an

expedited oral argument be scheduled as soon as possible.

Dated: August 7, 2004

Respectfully submitted,

/S/

Isidoro Rodriguez, Esquire
Virginia Bar No. 21573
THE LAW OFFICES OF RODRIGUEZ & SIBLEY, LLP
ATTORNEYS AND COUNSELORS AT LAW

United States Office:
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
Telephones: (703)362-4809
e-mail:isidoror@earthlink.net

South American Office:
World Trade Center
Calle 76 No. 54-11, Office 313
Barranquilla, Colombia
Telephone: (011)575-348001

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 9th *day of* September, 2003.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041481
Court of Appeals No. 0293-04-4

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN, et al.,

Appellees.

On August 5 and 14, 2003 came the appellant, in proper person, and filed a motion to transfer jurisdiction and motion for judicial notice, respectively, in this case.

Thereupon came the National Center for Missing and Exploited Children and filed a response to the motion to transfer jurisdiction.

On consideration whereof, the Court denies both motion filed by appellant.

A copy,

Teste:
_____S_____
Clerk

A 2nd Order allegedly issued on July 6, 2004, but with U.S. Mail post mark dated November 4, 2004, and received on November 5, 2004.

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 6th *day of* July, 2004.

ISIDORO RODRIGUEZ-HAZBUN

v. Record No. 3247-03-4
Circuit Court No. C-185125

AMALIN HAZBUN ESCAF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Before Judges Bumgardner, Kelsey and Senior Judge Hodges

For reasons stated in writing and filed with the record, the Court is of the opinion that this appeal is without merit. Accordingly, the judgment of the trial court is affirmed. Rule 5A:27. the appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the trial court.

A copy,

Teste:

Cynthia L. McCoy, Clerk

By: _____/S/_____

Marty P. Ring
Deputy Clerk

UNPUBLISHED DECISION

COURT OF APPEALS OF VIRGINIA

Present: Judges Bumgardner, Kelsey and Senior Judge Hodges

ISIDORO RODRIGUEZ-HAZBUN

M E M O R A N D U M
OPINION*

v. Record No. 3247-03-4 PER CURIAM
JULY 6, 2004

AMALIN HAZBUN ESCAF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Stanley P. Klein, Judge

(Isidoro Rodriguez; The Law Offices of Rodriguez & Sibley, on brief), for appellant.

No brief for appellee.

Appellant Isidoro Rodriguez-Hazbun appeals the December 4, 2003 order of the circuit court dismissing his appeal to that court. On appeal to this Court, he presents two questions:

I. Whether the Fairfax Chancery Court was in error in dismissing Isidoro's appeal from the June 18, 2003 order of the Fairfax J&D Court,

*Pursuant to Code § 17.1-413, this opinion is not designated for publication.

based on it[s] holding that there was no final order and it lacked jurisdiction under Va. Code §16.1-296.

II. Whether [the] Fairfax J&D Court and Chancery Court's proceedings have demonstrated a lack of impartiality, thereby violating Isidoro's right to due process and equal protection of the laws of Virginia, the Treaty [the Hague Convention Treaty on the Civil Aspects of International Child Abduction], and ICARA [the International Child Abduction Remedies Act].

Upon reviewing the record and opening brief, we conclude that this appeal is without merit.

Accordingly, we summarily affirm the decision of the circuit court. Rule 5A:27.

I.

On July 13, 2001, appellant instituted an action in the Fairfax County Juvenile and Domestic Relations District Court ("JDR Court") concerning his custody. Upon learning of this action, Amalin Hazbun Escaf, appellee, a citizen of Columbia, initiated a Hague Convention application in Columbia for his return to that country. The United States District Court for the Eastern District of Virginia, the United States Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States entertained and determined the litigation arising from appellee's Hague Convention

application. Thereafter, appellant filed a petition for a writ of mandamus with the United States District Court for the District of Columbia. He was not successful, nor was he successful on his appeal of the district court's decision to the United States Court of Appeals for the District of Columbia. As of June 18, 2003, appellant was awaiting that court's decision of his request for rehearing en banc.

Meanwhile, on June 11, 2003, appellant filed in the JDR Court a "Motion to Compel Right of Access and Visitation Pursuant to Final Joint Custody Agreement Dated August 1, 1997." By order entered June 18, 2003, the JDR Court denied the motion, noting that it had stayed all proceedings pending the federal court litigation.

Appellant appealed the June 18, 2003 order to the circuit court. By order entered December 4, 2003, the circuit court dismissed the appeal. Appellant now appeals that decision to this Court.

II.

Code § 16.1-296(A) reads in pertinent part: "From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction." (Emphasis added.)

""A final order is one which disposes of the whole subject, gives all the relief contemplated,

provides with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerially the execution of the order."'" Daniels v. Truck & Equip. Corp., 205 Va. 579, 585, 139 S.E.2d 31, 35 (1964) (citations omitted).

The JDR Court's June 18, 2003 order was not a final order. It merely determined that the court could not entertain appellant's motion because the state litigation had been stayed. Consequently, the circuit court lacked jurisdiction to entertain the appeal and did not err in dismissing the appeal.

Affirmed.

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 8th *day of* June, 2004.

ISIDORO RODRIGUEZ-HAZBUN

against

Record No. 0293-04-4
Circuit Court No. CH-185125

AMALIN HAZBUN ESCAF,

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

The Court of Appeals has appellate jurisdiction over final decisions of the circuit court in domestic relations cases and interlocutory orders involving injunction or "adjudicating the principles of a cause." Code Sec. 17.1-405. A final decision is one "'which disposes of the whole subject, gives all the relief that is contemplated, and leaves nothing to be done by the court.'" Southwest Virginia Hosps., Inc. v. Lipps, 193 Va. 191, 193, 68 S.E.2d 82, 83-84 (1951)(quoting Ryan v. McLeod, 73 Va. (32 Gratt.) 367, 376 (1879). The trial court's January 9, 2004 ruling is not a final decision in the case. Furthermore, the ruling does not involve an injunction or adjudicate of the principles of a cause. The order is interlocutory, is not determinative of the controversy, and does not address the merits of the case. See generally Polumbo v. Polumbo, 13 Va. App. 306, 411 S.E.2d 229 (1991).

Accordingly, this Court is without jurisdiction to

entertain the appeal. We dismiss the appeal without prejudice.

This order shall be certified to the clerk of the trial court.

A Copy,

Teste:

Cynthis L. McCoy, Clerk

By: _____S_____

Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 28th *day of* April, 2004.

ISIDORO RODRIGUEZ-HAZBUN

v. Record No. 3247-03-4
Circuit Court No. C-185125

AMALIN HAZBUN ESCAF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

Appellant has filed a "Motion to Expedite Appeal of the Order of December 4 of the Fairfax County Circuit Court and to Consolidate," and a Motion for Judicial Notice." Upon consideration whereof, we deny both motions.

This order shall be certified to the trial court.

A copy,

Teste:

Cynthia L. McCoy, Clerk

By: _____/S/_____
Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 28th *day of* April, 2004.

ISIDORO RODRIGUEZ-HAZBUN

against

Record No. 2758-03-4
Circuit Court No. CH-185125

AMALIN HAZBUN ESCAF,

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

Petitioner has filed a petition for a writ of mandamus and prohibition. He asks this Court to order the trial judge "to immediately comply with Virginia Court of Appeals--Rules of Appellate Procedures, Rule 5A:8(c), and thereby sign and transmit to the Clerk of the Fairfax County to be part of the record on appeal the written Statement of Facts, to which no objected [sic] was filed by respondents."

By order entered December 3, 2003, this Court granted leave to respondent and directed respondent "to provide noted to counsel and hold a hearing to consider the proposed written statement of facts filed by petitioner in Record No. 2004-03-4, and if respondent finds it appropriate to do so, to correct the proposed written statement." The order also stated that this Court would hold the petition in abeyance pending completion of this procedure.

The procedure has now been completed.

Respondent noticed and held a hearing and has signed a modified written statement of facts. Thus, petitioner has received all relief he is entitled to under Rule 5A:8. We dismiss the petition because there is no longer a justiciable controversy remaining to be determined. See City of Fairfax v. Shanklin, 205 Va 227, 229, 135 S.E.2d 773, 775 (1964).

Petitioner has also filed a

> Motion in Support of Writ of Mandamus No. 2758-03-4: (1) To Strike Ex Parte Statement of facts Prepared and Issued by the Hon. Judge M Longhorne [sic] Keith Prior to the Commencement of the Hearing Held on January 9, 2004, Though No Objections were Filed, Replacing Totally Petitioner's Statement of Facts and Exhibits filed on August 15, 2003; (2) To Strike Ex Parte Order Granting Motions to Quash and Ex Parte Order Denying Disqualification of Opposing Counsel; and (3) Enjoin the Order Granting $1,000.00, as Sanctions for the Issuance of Attorney's Witness Subpoenas.

We deny the motion[s].
This order shall be certified to trial court.
A Copy,
Teste:

Cynthis L. McCoy, Clerk
By: _____S_____
Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 28th *day of* April, 2004.

ISIDORO RODRIGUEZ-HAZBUN

against

Record No. 2004-03-4
Circuit Court No. CH-185125

AMALIN HAZBUN ESCAF,

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

The Court of Appeals has appellate jurisdiction over final decisions of the circuit court in domestic relations cases and interlocutory orders involving injunctions or "adjudicating the principles of a cause." Code Sec. 17.1-405. A final decision is one "'which disposes of the whole subject, gives all the relief that is contemplated, and leaves nothing to be done by the court.'" Southwest Virginia Hosps., Inc. v. Lipps, 193 Va. 191, 193, 68 S.E.2d 82, 83-84 (1951)(quoting Ryan v. McLeod, 73 Va. (32 Gratt.) 367, 376 (1879).

The July 25, 2003 order is not a final decision in the case. In Liggett v. Caudill, 247 VA. 130, 439 S.E.2d 350 (1994), the Supreme Court set forth the law relating to appeals form orders dismissing one or some, but not all, of the parties to an action. The general rule is that "'[i]n the absence of a statutory provision to the contrary, a judgement is not final for

purposes of appeal if it is rendered with regard to some but not all of the parties involved in the case." Id. at 133, 439 S.E.2d at 351 (quoting Wells v. Whitaker, 207 Va. 616, 628, 151 S.E.2d 422, 432 (1966)). An exception to the general rule exists "when the interests of the parties before the trial court are 'severable'. . . . " Id at 134, 439 s.E.2d at 353.

Here, the interests of mother and the NCMEC are joint, not severable. In fact, father's pleading in the trial court asked that mother "provide access to and visitation with" the child and the NCMEC "comply with their ministerial duties to assure access and visitation. . . ."

Furthermore, the July 25, 2003 order does not involve an injunction or adjudicate of the principles of a cause. The order is interlocutory, is not determative of the controversy, and does not address the merits of the case. See generally Polumbo v. Polumbo, 13 Va. App. 306, 411 S.E.2d 229 (1991); Weizenbaum v. Weizenbaum, 12 Va. App. 899, 407 S.e.2s 37 (1991); Pinkard v. Pinkerd, 12 Va. App 848, 407 S.E.2d 339 (1991).

Accordingly, this Court is without jurisdiction to entertain the appeal. We dismiss the appeal without prejudice.

Petitioner has also filed a Motion in Support of Writ of Mandamus No. 2758-03-4: (1) To Strike Ex Parte Statement of facts Prepared and Issued by the Hon. Judge M Longhorne [sic] Keith Prior to the Commencement of the Hearing Held on January 9, 2004, Though No Objections were Filed, Replacing Totally Petitioner's Statement of Facts and Exhibits filed on August 15, 2003; (2) To Strike Ex

Parte Order Granting Motions to Quash and Ex Parte Order Denying Disqualification of Opposing Counsel; and (3) Enjoin the Order Granting $1,000.00, as Sanctions for the Issuance of Attorney's Witness Subpoenas.

We deny the motion[s].

This order shall be certified to trial court.

A Copy,

Teste:

Cynthis L. McCoy, Clerk

By: _____S_____

Deputy Clerk

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

This cause came to be heard on the 9 day of January, 2004, on the National Center for Missing and Exploited Childrens' (non-party) motion for sanctions for Fees and costs in connection with motion to Quash Subpoena ad Testificandum.

Upon the matters presented to the Court at the hearing, it is

ORDERED as follows:

That Complainant, Isidoro Rodriguez-Hazbun, pay attorney's fees and cost in the amount of $1,000.oo (one Thousand Dollars) within 30 (thirty days) of this order, to the National Center for Missing and Exploited Children.

Entered 9 day of January 2004.

_____/S/_____
Honorable M. Longhorne Keith

SEEN:
Objections to granting sanctions and entry of Statement of Fact without hearing and without apply of Treaty.

_____/S/_____
Isidoro Rodriguez
Counsel for Plaintiff

_____/S/_____-
Anita Bahauddin (VA Bar 43818)
Counsel for the National Center for Missing and Exploited Children

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

THIS CAUSE CAME TO BE HEARD ON THE 9th day of January, 2004, on the Plaintiff's motion to Disqualify Warren L. Dennis, Esq., and the law firm of Proskauer Rose LLP.

Upon the matters presented to the Court at the hearing, it is

ORDERED as follows:

Complainant, Isidoro Rodriguez-Hazbun's Motion to Disqualify Warren L. Dennis, Esq., and the law firm of Proskauer Rose LLP is overruled as moot.

Entered this 9 day of January, 2004.

_____/S/_____
Honorable M. Longhorne Keith

SEEN:
Objections to ex parte hearing held on
Monday, Jan. 5, 2004, in Noncompliance
of Notice of Hearing filed on 12/25/03.

_____/S/_____
Isidoro Rodriguez
Counsel for Plaintiff

_____/S/_____
Anita Bahauddin (VA Bar 43818)
Counsel for the National Center for
Missing and Exploited Children

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN,
Petitioner,
Case No.
vs. C-185125

AMALIN HAZBUN ESCAF,
Respondent.

* * * * *

The above-entitled matter came for motion hearing on Friday, January 9, 2004, commencing at 11:50 a.m., at 4110 Chain Bridge Road, Fairfax, Virginia, before Sean P. Goza, Notary Public, M.A.R. Reporting Group, Professional Court Reporters, www.mar-reporting.com, (703)534-1225

BEFORE:
THE HONORABLE M. LONGHORN KEITH

* * * * *

Appearances

On Behalf of the Plaintiff:
Isidoro Rodriguez, Esq.
Rodriguez & Sibley
2304 Farrington Avenue
Alexandria, Va 22303
(703) 317-0526

On Behalf of Non-Party National Center for Missing and Exploited Children:
Anita M. Bahaddin, Esq.
PROSKAUER rose, L.L.P
1233 20th Street, N.W.
Suite 800
Washington, D.C. 20036-2396
(202)416-6822

PROCEEDING

(The court reporter was sworn.)

At page 3:

THE COURT: All right. There are several matters in front of me today. Let's deal with the first matter, the corrected statement of facts.

As I looked at the statement of facts filed by complainant, there were 38 paragraphs, none of which had anything to do with the hearing that was heard before me that you appealed.

The only thing before me was the NMCEM (sic)– or whatever it is –motion to dismiss because they weren't a party, and your motion for an expedited hearing. And I ruled that that (sic) was a calender control and try to get an expedited hearing, and I ruled tha National Council (sic) dismissed. That's what I did; that was the only thing that was in front of me. And your statement of facts doesn't even recite that.

MR. RODRIGUEZ: Your Honor, do you wish me to address the Court?

At page 7:

MR. RODRIGUEZ: The appeal that came out of the hearing that you held on July 25th was dismissed without consideration of the requirement that at the circuit level there was supposed to be a de novo trial of the events that occurred below regard to the motion for visitation access, pursuant to both Virginia law as well as the Hague Convention.
THE COURT: I understand that. But that --
MR. RODRIGUEZ: That was appealed.
THE COURT: That was what was before me, correct?
MR. RODRIGUEZ: Based on the record that was brought before you from the juvenile and domestic relations court.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

IT IS HEREBY ORDERED that the National Center for Missing and Exploited Children's Motion to Quash Subpoena Ad Testificandum on Susan Brinkerhoff is sustained.

Dated January 5, 2004

_____/S/_____
Honorable M. Longhorne Keith

_____/S/_____
Anita Bahuddin (VA Bar 43818)
Counsel for the National Center for
Missing and Exploited Children

Noticed: Did no Appear Rule 1:13

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

IT IS HEREBY ORDERED that the National Center for Missing and Exploited Children's Motion to Quash Subpoena Ad Testificandum on Warren L. Dennis is sustained.

Dated January 5, 2004

_____/S/_____
Honorable M. Longhorne Keith

_____/S/_____
Anita Bahuddin (VA Bar 43818)
Counsel for the National Center for
Missing and Exploited Children

Noticed: Did no Appear Rule 1:13

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

This cause came on to be heard the 4th day of December, 2003 on Trial Scheduled.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, And DECREED as follows: Appeal is dismissed without prejudice for the reasons stated by the court on the record.

Entered this 4th day of Dec, 2003.

Objection to Order

_____/s/_____
Judge Stanley P. Klein
Circuit Court Judge

Seen:
Isidoro Rodriguez, Esq.
Counsel for Petitioner

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ-HAZBUN,
Petitioner,
Case No.
vs. C-185125

AMALIN HAZBUN ESCAF,
Respondent.

* * * * *

The above-entitled matter came on for motion hearing on Thursday, December 4, 2003, commencing at 10:16 a.m. at 4110 Chain Bridge Road, Fairfax, Virginia, before Janice A. Salas, court reporter.

BEFORE:

THE HONORABLE STANLEY P. KLEIN

M.A.R. REPORTING GROUP
Professional Court Reporters'
www.mar-reporting.com
(703)534-1225

APPEARANCES

ON BEHALF OF THE PETITIONER:
ISIDORO RODRIGUEZ, ESQUIRE
Rodriguez & Sibley
2304 Farrington Avenue
Alexandria, Virginia 22303

(703)317-0526
(703)960-0225
isidoror@earthlink.net

ON BEHALF OF THE RESPONDENT:
(No counsel present.)

ON BEHALF OF THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN:
ANITA M. BAHAUDDIN, ESQUIRE
Proskauer Rose LLP
1233 20th Street, N.w.
Suite 800
Washington D.C.
(202)416-6822
(202)416-6899-fax
abahauddin@proskauer.com

ALSO PRESENT:
SUSAN BRINKERHOFF

PROCEEDINGS

(The Court reporter was sworn.)
(Beginning at page 4 of transcript)
THE COURT: Let the record reflect that this is the matter of Isidoro Rodriguez-Hazbun, the complainant, versus Amalin Hazbun Escaf, defendant, Chancery Number 185125.

Will all counsel who are present and have an interest in this matter, please identify themselves for the record.
MR. RODRIGUEZ: Isidoro Rodriguez. Counsel for

petitioner, Isidoro Rodriguez hazbun, minor son.
THE COURT: Mr. Rodriguez, you are the attorney?
MR. RODRIGUEZ: I am the attorney and the father of the petitioner.
THE COURT: Father of the petitioner.
MR. RODRIGUEZ: Who filed a petition in July 2001 pursuant to his rights as a U.S. citizen to stay in the United States, and he was forced out of the United States on June 11, 2003, and subsequently, we filed a motion for visitation and access pursuant to the joint custody agreement, Virginia law, and the Hague Convention, which was denied by the Family court, which is on appeal.
THE COURT: And that's what this is? It's an appeal of the determination made by the Family court.
MR. RODRIGUEZ: Well, I don't know if its's a determination. It was an order denying visitation without any explanation.

(At page 47)
THE COURT: ... today I dismiss this appeal without prejudice for lack of jurisdiction under 16.1-296 for the reasons articulate by the Court on the record. And Mr. Rodriguez's exception to my ruling is noted for purposes of the record.
MR. RODRIGUEZ: I have a number of exception, Your Honor.
THE COURT: Go Ahead, sir.
MR. RODRIGUEZ: Primarily, I object to this court, as well as the Juvenile and Domestic Relations Court, undercutting the whole purpose of the treaty, as well as the federal statute, which provided current (sic) jurisdiction to the state court to deal with these

matters, and they have stay and violated both mine and my son's right for more than two years, and so thereby, I do except, and will be taking this on appeal.

(at page 50)
MR. RODRIGUEZ: Well, Your Honor, may I move on a bench motion for a writ of mandamus to the Fairfax County Domestic Relations Court to move forward on this case?
THE COURT: Sir, I don't have any basis to do that, and I can't give you any legal advice, Mr. Rodriguez.
MR. RODRIGUEZ: I don't need any.

ORDER Case No.: JJ341050-01-01

Commonwealth of Virginia

Fairfax County Juvenile and Domestic Relations District Court

Master Isidoro Rodriguez-Hazbun

v.

Ms. Amalin Hazbun Escaf

THE FOLLOWING PARTIES WERE PRESENT:

Petitioner: [Isidoro Rodriguez-Hazbun]

Type of Case: Motion for Visitation

FINDING OF THE COURT: This Court stayed all proceeding pending U.S. District Court Action

IT IS ORDERED THAT: The Motion to enforce visitation is Denied.

CJ MAYFIELD

6-18-2003 /s/

JUDGE

COMMONWEALTH OF VIRGINIA:
IN THE JUVENILE AND DOMESTIC RELATIONS
COURT OF THE COUNTY OF FAIRFAX
Master Isidoro Rodriguez-Hazbun,
Petitioner,
v. Case No. JJ-347050-01-01
Ms. Amalin Hazbun Escaf,
Respondent.

PETITIONER'S MOTION TO COMPEL RIGHT OF ACCESS AND VISITATION PURSUANT TO FINAL JOINT CUSTODY AGREEMENT AUGUST 1, 1997

Comes now Petitioner, Master Isidoro Rodriguez-Hazbun ("Isidoro"), to move the Court, pursuant to the Joint Custody Agreement dated August 1, 1997 (Exhibit 1 and 1a), and Article 21 of the Hague Convention on the Civil Aspects of International Child Abduction Dated October 25, 1980, T.I.A.A. No 11,670, 19 I.L.M. 1501, 42 U.S.C. § 11601 at ¶ (4), 51 Fed. Reg. 10,513 (1986) (Exhibit 2), laws of the Republic of Colombia (Exhibit 3 and 3a), and Virginia Code Ann. § 20.124.3, for an order to:

a. Respondent to provide access to and visitation with Isidoro; and,

b. Non-party National Center for Missing & Exploited Children ("NCMEC"), and the United States Department of State, Office of Children's Issues to immediately comply their ministerial duties to assure access and visitation pursuant to the above legal requirements.

Dated: June 11, 2003

Respectfully submitted,
Isidoro Rodriguez, Esq.
Virginia State Bar No. 21573

HEARING BEFORE FIRST FAMILY COURT OF BARRANQUILLA, COLOMBIA
PROCESS: CUSTODY AND PERSONAL CARES
PLAINTIFF: AMALIN HAZBUN ESCAF
DEFENDANT: ISIDORO RODRIGUEZ CRUZ
MINOR: 1

In Barranquilla, on August first (1st) of Nineteen Ninety Seven (1997), during public hearing at the First Family Court, the Honorable Judge declares open the hearing in this process of CUSTODY AND PERSONAL CARES of AMALIN HAZBUN ESCAF vs. ISIDORO RODRIGUEZ CRUZ, on behalf of minor ISIDORO RODRIGUEZ HAZBUN. It is confirmed that both parties are present and their attorneys. At this stage of the hearing the Honorable Judge advice the parties to present an agreement or conciliation formula. Defendant Mr. ISIDORO RODRIGUEZ speaks and says: I propose the Joint Custody of my son ISIDORO RODRIGUEZ HAZBUN in the following manner: That the mother AMALIN EMILIA HAZBUN ESCAF have him her personal cares but both parents share the rights of correction, moral and intellectual education of our minor child. Regarding visitations I propose to pick up my son ISIDORO RODRIGUEZ HAZBUN every fifteen days at the end of school day on Friday for him to stay with me all that weekend, taking him back on Sunday at 7 pm to the house of his mother or on Monday if it is holiday, with his homework done and his complete luggage. During the week days, this is Monday through Friday, I will pick up my son ISIDORO to take him to classes with the additional teacher assigned, and will pick him up at the class and continue with him

until 7 pm, this when in that week it correspond to me his visitation spending the night with me, this is once a week. When there is no visitationspending night with me besides picking him up on the day of the above noted classes I will pick him up on the day he has football classes once a week until the same hour, that means that in that week there will be two visitation days on week days. I want to add that in the case that for any circumstances there is not football class or writing class with the teacher, he will be with me anyway two working days in the week and in the other week one working day and will spend the weekend with me. Vacations will be shared as follows: The child will spend one year Carnivals with a parent and Holy Week with the other, mid year vacation since are longer jointly parents agree (.....) fifteen days with the mother. The end of year vacation this year the first fifteen days will be with the father permitting that if the minor is still with him for December 31st spend that date with his mother and go back with him to finish the vacation and this situation of the end of year vacation will alternate annually keeping always the spirit of sharing one of the two special dates of December 24 and 31st of each year. No discussion fathers' day he will spend it with his father and mothers' day with his mother. Regarding birthday of the child ISIDORO we will celebrate it jointly the parents with our son, making it clear that next celebration will be made by me. Ms. AMALIN HAZBUN takes the word and states: I am totally in agreement with the formula offered by the defendant. The Honorable Judge takes the word to say. Since the parties have arrived to an agreement about the totality

of the litigation, being such agreement in accordance with the law, it is approved and this process finished. It is just confirmed that at the non-compliance with the agreed hereby it will be applied by express statement of num. 4 of art. 350 of the Minor Code the sanctions provided on article 72 ibidem. No costs in this process. It is signed by all those who have intervened. The parties wish to clarify that just for year 1988 the mother will have the minor during Carnivals as well as Holy Week.

The Judge:

s/_____

LUZ MYRIAM REYES CASAS, Judge

Plaintiff:

s/_____

AMALIN HAZBUN ESCAF

Defendant:

s/_____

ISIDORO RODRIGUEZ CRUZ

Attorney for Plaintiff

s/_____

LUZ MYRIAM SANCHEZ DE CARVAJAL

Attorney for Defendant

s/_____

MABEL CASTRO PALACIO

The Court Clerk

s/_____

ELVIA MAZA DE CANTILLO

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988-23/07/01

Ref No. 23.833(CUSTODY AND VISIT REGULATION) FIRST FAMILY COURT ROOM, BARRANQUILLA, COLOMBIA, August 26, 1997

Mrs. Mabel Castro-Palacio-Defendant's Attorney in the process for custody and visit regulations initiated by Mrs. Amalin Hazbun, against Mr. Isidoro Rodriguez Cruz, in favor of minor Isidoro Rodriguez Hazbun, requests this Court to add the present document to the record of the hearing attended on August 1st, 1997, raised with basis on the conciliation that the parties arrived at, in order to determine clearly and expressly, that the custody of the above mentioned minor will be shared by the parents, since this was the basic point for the conciliation.

The Court, in order to resolve the petition of the Defendant's Attorney, refers to the statement of the Defendant, which was literally written down and is hereby transcribed in its relevant portion, so that this Court may take the corresponding decision. Mr. Rodriguez-Cruz states in the aforementioned document: "That his mother Mrs. Amalin Hazbun Escaf keep him under her personal care but that both parents share the right for the education, and the moral and intellectual up-bringing of our son. As for the visits, I propose to take my son Isidoro Rodriguez-Hazbun on Fridays every fortnight at school's exit hour, in order to spend the weekend together, and to take him back to his mother on Sunday at seven p.m. or on Monday if it is a holiday, with his home work done, and with his complete luggage. On weekdays, that is, form Monday to Friday, I commit myself to take my son ISIDORO to

his additional lessons, then take him and stay with him until seven o'clock p.m., at weeks when he will spend the night over, this is to say, once a week. At weeks when he will not spend the night,apart from taking him from the above mentioned additional lessons, I will take him to his soccer lessons once a week until seven p.m., meaning that week there will be two visiting days on working days."

From the foregoing transaction, it is clearly observed that the mother of the minor Isidoro, retains the child's custody, and therefore there is no need to make any clarification thereto. It would be otherwise if Mrs. Amalin Emilia Hazbun-Escaf had not complied with the conciliation terms stated in the document alluded by Mrs. Mabel Castro, in which case strict compliance would be requested to the Court, and Mrs. Hazbun-Escaf penalized accordingly.

Notify and comply

s/_____

LUZ MYRIAM REYES CASAS, Judge

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988 (23/0701).

DEPARTMENT OF STATE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

CERTIFICATE OF BIRTH ABROAD

of a Citizen of the United States of America

This is to certify that according to records on file in this Office ISIDORO RODRIGUEZ-HAZBUN *sex* MALE *was born at* BARRANQUILLA, COLOMBIA *on* MARCH 10, 1989 *Report of birth recorded on* June 20, 1989.

In Witness Whereof, I have hereunto subsribed my name and affixed the seal of the Consular Service of the United States at BARRANQUILLA *this* 20th *day of* June *1989.*

(Seal)

/s/_____

Lawrence J. Gumbiner
Vice Consul

U.S. CONSTITUTION, TREATY, FEDERAL STATUTES, and REGULATION INVOLVED

The Supremacy Clause of the United States Constitution, article VI, clause 2, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every States shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No 11,670, 19 I.L.M. 1501

The State signatory to the present Convention, Firmly convinced that the interest of children are of

paramount importance in matters relating to their custody, Desiring to . . . secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions-

Article 1

The object of the present Convention are-. . . . b) to ensure that rights . . . of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting State shall take all appropriate measures to secure within their territories the implementation of the object of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 5

For the purpose of this Convention-. . . . b)"right of access" shall include the right to take a child for a limited period of time to a place other then the child's habitual residence.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously for the return of children. . . .

Chapter IV–Right of Access

Article 21

An application to make arrangement for organizing or, securing the effective exercise of the rights of access may be presented to the Central

Authority of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V- General Provisions

Article 29

This Convention shall not preclude any person, . . . who claims there has been a breach of . . . access within the meaning of . . . Article 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

The International Child Abduction Remedies Act
42 U.S.C. § 11601

(a) Findings

The Congress makes the following findings: . . . .

(4) The Convention on the Civil Aspects of International Child Abduction, . . . establishes legal rights and procedures for the prompt . . . securing the

exercise of visitation rights. . . .

(b) Declarations
The Congress makes the following declarations:

(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes-

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts of the United States to determine under the Convention and not the merits of any underlying child custody claims.

The Convention and this chapter empower courts in the United States to determine rights under the Convention and not the merits of any underlying child custody claims.

42 U.S.C. § 11602. Definitions
For the purpose of this chapter-
(1) the term "applicant" means any person who, . . . , files an application . . . for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention.
(4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking the relief under the Convention;

(5) the term "person" includes any individual, institution, or other legal entity or body;
(6) the term "respondent" means any person against whose interests a petition is filed in court, accordance with this chapter, which seeks relief under the Convention;
(7) the term "rights of access" means visitation rights.

42 U.S.C. § 11603
(a) Jurisdiction of courts

The courts of the States and the United States district courts shall have concurrent original jurisdiction or actions arising under the Convention.
(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention . . . for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed. . . . .
(d) Determination of case

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention .
(e) Burden of proof

(1) a petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence- . . . .

((B) in the case of an action for arrangements for organizing or securing the effective exercise of

rights of access, that the petitioner has such rights.

42 U.S.C. § 11605. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

Department of State, 51 Fed. Reg. 10,513 (1986), V. Access Rights-Article 21.

C. Procedure for Obtaining Relief

Procedurally Article 21 authorizes a person complaining of, or seeking to prevent a breach of access rights to apply to the CA of a Contracting State in the same way as a person seeking return of the child. . . .

Once the CA receives such application, it is to take all appropriate measures pursuant to Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. . . .

D. Alternative Remedies

In addition to or in lieu of invoking Article 21 to resolve visitation-related problems, under Article 18, 29 and 34 an aggrieved parent whose access rights

have been violated may bypass the CA and the Convention and apply directly to the judicial authority of a Contracting State for relief under other applicable laws.

INTERNATIONAL ABDUCTION RESOLUTION PASSED BY HOUSE WASHINGTON, D.C., May 23, 2000

House Concurrent Resolution 293, introduced by Congressman Nick Lampson (D, Tx-9), Founder and Chairman of the Congressional Missing and Exploited Children's Caucus, was passed 416-0 by the House on May 23rd, 2000. The concurrent resolution, which urges signatories of the Hague Convention onthe Civil Aspects of International Child Abduction to uphold the agreement, was brought to the floor under suspension.

Resolution 293

Whereas the Department of State reports that at any given time there are 1,000 cases of American children either abducted from the United States or wrongfully retained in a foreign country;

Whereas many more cases of international child abductions are not reported to the Department of State;

Whereas the situation has worsened since 1993, when Congress estimated the number of American children abducted from the United States and wrongfully retained in foreign countries to be more than 10,000;

Whereas Congress has recognized the gravity of international child abduction in enacting the International Parental Kidnapping Crime Act of 1993 (18 U.S.C. § 1204), and the Parental Kidnaping Prevention Act (28 U.S.C. § 1738a), and substantial reform and reporting requirements for the Department of State in the fiscal years 1998-1999 and 2000-2001 Foreign Relations Authorization Acts;

Whereas the United States became a contracting party in 1988 to the Hague Convention on the Civil Aspects of International Child Abduction (in this concurrent resolution referred to as the `Hague Convention') and adopted effective implementing legislation in the International Child Abduction Remedies Act (42 U.S.C. §§ 11601 *et seq.*);

Whereas the Hague Convention establishes mutual rights and duties between and among its contracting states to expedite the return of children to the state of their habitual residence, as well as to ensure the rights of custody and of access of the laws of one contracting state are effectively respected in the other contracting states, without consideration of the merits fo any underlying child custody dispute;

Whereas Article 13 of the Hague Convention provides a narrow exception to the requirement for prompt return of children, which exception releases the requested state from its obligation to return a child to the country of the child's habitual residence if it is established that there is a `grave risk' that the retrun would expose the child to `physical or psychological harm or otherwise place the child in an intolerable situation' or `if the child objects to being returned and has attained an age and degree of maturity at which it

is appropriate to take account of [the child's] views';
Whereas the National Center for Missing and Exploited Children (NCMEC), the only institution of its kind, was established in the United States for the purpose of assisting parents in recovering their missing children;

Whereas Article 21 of the Hague Convention provides that the central authorities of all parties of the convention are obligated to cooperate with each other in order to promote the peaceful enjoyment of parental access rights and fulfillment of any conditions to which the exercise of such rights may be subject, and to remove as far as possible, all obstacles to the exercise of such rights;

Whereas some contracting states fail to order or enforce normal visitation rights of parents of abducted or wrongfully retained children who have not been returned under the terms of the Hague Convention; an

Whereas the routine invocation of the Article 13 exception, denial of parental visitation of children, and the failure by several contracting parties most notably Austria, Germany, Honduras, Mexico, and Sweden, to fully implement the Convention deprives the Hague Convention of the spirit of mutual confidence upon which its success depends: Now, therefore, be it Resolved by the House of Representative (the Senate concurring), That Congress urges--

1) all contracting parties to the Hague Convention, particularly European civil law countries that consistently violate the Hague Convention such as Austria, Germany, and Sweden, to comply fully with both the letter and spirit of their international legal obligations under the Convention;

2) all contracting parties to the Hague

Convention to ensure their compliance with the Hague Convention by enacting effective implementing legislation and educating their judicial and law enforcement authorities;

3) all contracting parties to the Hague Convention to honor their commitments and return abducted or wrongfully retained children to their place of habitual residence without reaching the merits of any underlying custody dispute and ensure parental access rights by removing obstacles to the exercise of such rights;

4) the Secretary of State to disseminate to all Federal and State courts the Department of State's annual report to Congress on the Hague Convention compliance and related matters; and

5) each contracting party to the Hague Convention to further educate its central authority and law enforcement authorities regarding the Hague Convention, the severity of the problem of international abduction, and the need for immediate action when a parent of an abducted child seeks their assistance.